

MALAYSIAN REPORTS**RAJION BIN HAJI SULAIMAN v.
GOVERNMENT OF KELANTAN**[F.C. (Suffian L.P., Raja Azlan Shah and
Wan Suleiman F.J.J.) September 5, 1975]

[Kota Bharu — Federal Court Civil Appeal No. 28 of 1975]

*Administrative Law — Public officer — Stoppage of increments — Service at pleasure of Ruler — Power to alter rules relating to appointment — Federal Constitution, art. 132(2A).**Constitutional Law — Public services — Service at pleasure of Ruler — Rules relating to appointment — Power to alter — Federal Constitution, art. 132(2A).*

The appellant was a workshop clerk in the service of the Government of Kelantan. When he was appointed, his letter of appointment did not state that he had to pass any examination. He was given annual increments until he reached the efficiency bar but subsequently his increments were stopped on the ground that he had not passed the required examination. The appellant applied for a declaration that the stoppage of his increments was unlawful and void. The application was dismissed in the High Court and he appealed to the Federal Court.

Held, dismissing the appeal: (1) in view of the fact that the appellant held his office at the pleasure of the Ruler, his tenure of the office was subject not only to rules and regulations prevailing at the time of his appointment but also to any amendments to such rules and regulations made by the Government;

(2) in this case therefore the appellant could not contend that his letter of appointment made no reference to the passing of any examination;

(3) in this case the payment of salary above the bar on conversion must be regarded as an indulgence by the State in recognition of his past services but the requirement that he should pass the examination required under the rules of service remained applicable to him and therefore he had no right to further increments until he passed the prescribed examination.

Cases referred to:-

- (1) *Memudu Lagunju v. Olubadan-in-Council* [1952] A.C. 387.
- (2) *Healey v. Minister of Health* [1955] 1 Q.B.D. 221.
- (3) *Majumdar v. Attorney-General of Sarawak* [1966] 1 M.L.J. 41; [1967] 1 M.L.J. 101, C.C.; [1969] 1 M.L.J. 132, P.C.
- (4) *Commissioner for Religious Affairs, Trengganu & Ors. v. Tengku Meriam binti Tengku Sri Wa Raja & Anor.* [1970] 1 M.L.J. 222.
- (5) *Government of Malaysia v. Rosalind Oh Lee Pek Inn* [1973] 1 M.L.J. 222.
- (6) *Mohamed Hussein & Ors. v. State of Hyderabad* A.I.R. 1953 Hyd. 298.
- (7) *Kodeeswaran v. A.G. of Ceylon* [1970] 2 W.L.R. 456, 464-465.
- (8) *Carey v. The Commonwealth* (1921) 30 C.L.R. 132.
- (9) *Haji Ariffin v. Government of Pahang* [1969] 1 M.L.J. 6.
- (10) *Gnanasundram v. Public Services Commission* [1966] 1 M.L.J. 157.

FEDERAL COURT.

A. Wilson for the appellant.

Datuk Idris bin Yusoff (State Legal Adviser) for the respondent.

In the court below in Civil Suit No. 59 of 1969 the following judgment was delivered on February 5, 1975:

A **Ibrahim J.:** Plaintiff was appointed by His Highness the Sultan in Council of the State of Kelantan, i.e. defendant, as a workshop clerk in the Public Works Department with effect from January 1, 1949 on a salary of \$120 per month and after a probationary period of six months he was confirmed in his appointment on a salary scale of \$65 x 5 — 110/(Exam. Bar) 120 x 10 — 170/(Efficiency Bar) 180 x 10 — 230/(Vacancy Bar) 245 x 10 — 275. The starting salary of \$120 per month was above the examination bar and his letter of appointment did not say that he had to pass any examination. He was given yearly increments until he reached the efficiency bar when defendant stopped him from getting further increments on the ground that he had not passed the required examination even though his head of department had recommended that he be allowed to cross the efficiency bar. Due to various conversions in the salary scale the last salary he drew before the coming into force of the Suffian Salary Scheme was \$420 per month which as laid down in Service Circular No. 7 of 1964 dated January 1, 1964 was (\$125) \$140 x 8 — 156/(Bar) 230 x 15 — 260/(Exam. Bar) 300 x 15 — 420/(Efficiency Bar) 445 x 15 — 535/(Vacancy Bar) (480) (510) 560 x 20 — 620. On the introduction of the Suffian Salary Scheme on January 1, 1970 his salary of \$420 was converted to \$575 in the Clerical Officer Grade II scale in the scale of \$400 x 25 — 700 and as there was no efficiency bar there he continued thereafter to draw annual increments until his retirement on March 10, 1973 when his salary was \$650 per month.

It is contended by plaintiff that the various conversions of his salaries which confirmed his appointment above the examination bar had not altered or varied the terms of his appointment and that defendant had deprived him of his normal increments above the efficiency and vacancy bars and of subsequently being converted to a Clerical Officer, Grade I in the Suffian Salary Scheme. He therefore prays for:

- F
- (a) A declaration that the stoppage of increments of his salary for his service with defendant on May 1, 1950 and thereafter was and is unlawful, void and inoperative and of no effect;
 - (b) An account to be taken of the increments of the salary due to him from defendant as from May 19, 1963;
 - (c) Judgment for the said amounts found to be due to plaintiff;
 - (d) Interest;
 - (e) Costs and
 - (f) Such further or other reliefs as the court deems fit.
- G
- The defences raised by defendant are as follows:
- (a) Competency to vary the terms of appointment unilaterally;
 - (b) Estoppel;
 - (c) Prerogative and jurisdiction.
- I

For convenience I shall deal with them in the reverse order and therefore start with (c). Article 132(2) and (2A) of the Federal Constitution reads as follows:

"132 (2) Except as otherwise expressly provided by this Constitution, ... the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State law and, subject to the provisions of any such law, by the Ruler or Governor of that State.

(2A) ... except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Governor."

Vide Kelantan Gazette Notification No. 352 of 1959 the prerogative powers of His Highness the Sultan have since been exercised by the State Public Service Commission and it is contended by defendant that since this action touches upon the exercise of such a prerogative power it is proper that only the Service Commission should handle it. In support of this contention defendant relies on *Memudu Lagunju v. Olu-badan-in-Council*,⁽¹⁾ *Healey v. Minister of Health*,⁽²⁾ *Majumdar v. Attorney-General of Sarawak*.⁽³⁾

I do not agree with this contention of defendant. In *Memudu Langunju v. Oblubadan-in-Council*⁽¹⁾ the head-note reads as follows:

"By subsection (2) of section 2 of the Appointment and Deposition of Chiefs Ordinance, 1948, of Nigeria: 'In the case of any dispute the Governor, after due inquiry and consultation with the persons concerned in the selection, shall be the sole judge as to whether any appointment of a chief has been made in accordance with native law and custom.'"

The above subsection commits to the Governor exclusively the duty of judging whether an appointment has been made in accordance with native law and custom, and the jurisdiction of the courts to decide that question is absolutely and unconditionally excluded by the subsection."

That action however was for a declaration that the selection of the second respondent was contrary to native law and custom and not for a declaration that the Governor's decision was bad. If it had been for such a declaration the Privy Council would have assumed jurisdiction. Their Lordships' judgment delivered by Lord Normand at page 398 said:

"... But in no circumstances can the courts assume to themselves jurisdiction to decide that an appointment has or has not been made in accordance with native law or custom, and an action framed, as this action is framed, to submit that question to the courts' decision is incompetent."

Further at page 400 his Lordship said:

"Their Lordships might accordingly have had little difficulty in finding that the requirements of the Ordinance had not been fulfilled. But whether they were fulfilled or not the courts have no jurisdiction to grant the only relief sought in this action. There may be cases in which the Board, finding itself unable to grant the specific relief claimed, would yet be disposed to grant some other relief if equity and justice warranted it. But the appellant ought to have appreciated the weakness of his case at latest by the date of the first judgment of the Court of Appeal, and he should then have reframed his action by amendment, or abandoned it and brought another action in competent form. He did neither, and when the case came before the Supreme Court on return from the Court of Appeal his counsel insisted that the court should entertain and decide the question whether native law and custom had been violated. He has never deviated from that position till the last stages of the hearing of this appeal, and it would now be unfair to his opponents to allow him to change his ground or to grant him a relief which he has till this last moment never sought."

Again in *Healey's case* where plaintiff was claiming for a declaration that he was a mental health officer within the meaning of the regulation it was held that:

A "the plaintiff by his pleading not having asked for a declaration that the Minister's determination was invalid or asserted that the determination of the Minister was wrong in law or that the Minister lacked jurisdiction, but having invited the court to assume an appellate jurisdiction, which it had not been given and could not create, the appeal must be dismissed."

In the present case plaintiff's request is for a declaration that the stoppage of his increments by defendant was and is unlawful or void on the ground that it had contravened the terms of his appointment as was offered to him on May 1, 1949.

Insofar as *Majumdar's case* is concerned it would appear to me that the courts had not held that the justiciability of the claim for inducement pay under the terms of the contract concerned a prerogative right. They only held that whether an officer is entitled to inducement pay under the terms of the General Orders is for the Governor-in-Council to decide. This did not apply to the claim under the contract which was not allowed on the ground that he was not entitled to it under the terms of the contract.

D As regards the second defence (b), defendant is in effect contending that since it was plaintiff who wished his case to be referred to the Federal Treasury, Kuala Lumpur and that he had also sat for the examination on December 30 and 31, 1952 it can be implied that plaintiff had accepted the ruling made by defendant and he is therefore estopped from challenging the correctness of that ruling.

E I do not also agree with this contention. The case of *Commissioner for Religious Affairs, Trengganu & Ors. v. Tengku Meriam binti Tengku Sri Wa Raja & Anor.*⁽⁴⁾ relied upon by defendant to support its contention could be distinguished from the present case. In that case which was an appeal from the judgment of Wan Suleiman J. (as he then was) [1969] 1 M.L.J. 110 in which he declared the wakf to be invalid it appears that the parties had agreed to refer the document of wakf to and abide by the decision of the Mufti. This was done and the Mufti had given a fetua that the wakf was valid. It was held:

(1) (By Azmi L.P. and Suffian F.J.) although the wakf was invalid, the parties were estopped from challenging its validity as they or their predecessors had agreed to abide by the decision of the Mufti in this case;

(2) (By Ali F.J.) the respondents in this case were precluded from challenging the validity of the wakf as an authoritative ruling binding on them had been given by the Mufti and therefore the trial court had in the circumstances no jurisdiction to hear the case.

H It is true that plaintiff in the present case had asked defendant to refer the matter to the Federal Treasury and that after the Federal Treasury had given its ruling he had sat for and failed the required examination but that does not mean that he had agreed to abide by and accept that ruling. Section 115 of the Evidence Act which deals with estoppel reads as follows:

I "115. When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing."

The evidence does not show that plaintiff has made any representation that it was a valid term of his con-

tract of service that he was to pass the examination to pass the efficiency bar or that he has induced defendant to act in that behalf. A

As regards defence (a) defendant contends that although it had not imposed any condition or term at the time when the appointment was made other than those mentioned in the letter of appointment that does not mean that it is prevented from imposing any other condition or term by an administrative act. B

It is true that in *Government of Malaysia v. Rosalind Oh Lee Pek Inn*⁽⁵⁾ Suffian F.J. (as he then was) at page 224 said:

"Though the plaintiff holds office at the pleasure of the Yang Dipertuan Agung (Article 132 (2A) of the Federal Constitution) I hold contrary to the arguments on behalf of the Government that the relation between her and the Crown are contractual." C

but he went on to say:

"I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J. at page 1894 when delivering the judgment of the Indian Supreme Court in *Roshan Lal v. Union of India* A.I.R. 1967 S.C. 1889: D

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties." E

In that case the Respondent, a woman Inspector of Police, was while unmarried given by the government rent-free quarters or an allowance in lieu. After she married on August 20, 1962 and went to live with her husband, however, she received neither the rent-free quarters nor an allowance in lieu. She applied for a rent allowance and eventually the government agreed to give her a rent allowance but with effect from March 1, 1965. She brought an action against the government for the housing allowance from the date of her marriage to February 28, 1965 and judgment was given in her favour in the Sessions Court. The Government of Malaysia appealed. It was held G that:

(1) the contract between a public servant and the Government is of a special kind, as once appointed the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory or administrative rules made by the Government;

(2) there was nothing in the circular and regulations in this case that entitled the respondent to a housing allowance and therefore her claim should have been dismissed. H

In *Mohamed Hussein & Ors. v. The State of Hyderabad*⁽⁶⁾ Mohd. Ahmad Ansari J. at page 301 said:

"(7)... The conclusions about the necessity of a change in the conditions of the service of primary school teachers are so obviously of administrative nature that the prayer for a Writ of *Certiorari* in the applications appears to us to be unjustified and cannot be granted." I

He went on further and at page 302 said:

"(11) These authorities do establish that the regulations relating to the public services under the Constitution are directory, liable to be changed to suit the public policy of the State, and such variations are not amenable to Writs or directions under Article 226. The executive of this

State in pursuance of the policy of making regional languages the medium of instruction in all primary schools have varied as regards teachers in such schools, the Rules of examination of these languages for public servants in general; but by doing so no duty towards the teachers had been violated. Indeed, the variation has been made in exercise of the inherent right of the Government as observed by the learned Chief Justice of Travancore Cochin High Court. We as courts of law have no concern with the correctness or otherwise of the policy....

(12) The third reason urged in the application for declaring void the directions issued for enforcing the passing of the Test, mentioned in the Circular is that no stipulations of this nature were ever entered into when the teachers were employed. We think no express stipulations of this nature are necessary. Whatever may have been the terms of their employments, the applicants are public servants and the terms of their service are always subject to the qualifications dictated by the public policy. No matter to what service the servant may belong and no matter what position he holds in the service, such qualifications are always implied in the engagement. It is enough that a citizen is a public servant and the qualification is directed by the public, no matter on what grounds it is based. Therefore, the applicants' employments as the teachers of primary schools contain by implication the stipulations that they are to conform to the rules framed on public policy for the efficient discharge of their duties. At any rate we do not think that they can claim that the rules prevailing at the time of their employment are to be observed for all time to come. That cannot be reconciled with the principles of being employed at the pleasure of the President or the Rajpramukh. For these reasons, the ground urged must be rejected."

As in the present case defendant had made an administrative ruling which was confirmed by the Federal Treasury, Kuala Lumpur that plaintiff was required to pass the examination before he could get any increment above the efficiency bar, plaintiff cannot succeed in his claim.

In the event I would dismiss the claim with costs.

[From the above decision the plaintiff appealed to the Federal Court. The following judgments were delivered in the Federal Court:]

Wan Suleiman F.J.: The appellant, who has been on retirement since March 9, 1973 was a temporary clerk before January 1, 1949. On May 1, 1949 he was appointed Workshop Clerk by His Highness The Sultan in Council w.e.f. January 1, 1949 on an initial salary of \$120 per month and after a probationary period of six months he was confirmed in his appointment on a salary scale \$65 x 5 — 110/(Exam. Bar) 120 x 10 — 170/(Efficiency Bar) 180 x 10 — 230/(Vacancy Bar) 245 x 10 — 275. The starting salary of \$120 per month was above the examination bar and his letter of appointment did not say that he had to pass any examination. He was given yearly increments until he reached the efficiency bar when defendant stopped him from getting further increments on the ground that he had not passed the required examination even though his head of department had recommended that he be allowed to cross the efficiency bar. Due to various conversions in the salary scale the last salary he drew before the coming into force of the Suffian Salary Scheme was \$420 per month which as laid down in Service Circular No. 7 of 1964 dated January 1, 1964 was (\$125) \$140 x 8 — 156/(Bar) 230 x 15 — 260/(Exam. Bar) 300 x 15 — 420/(Efficiency Bar) 445 x 15 — 535/(Vacancy Bar) (490) (510) 560 x 20 — 620. On the introduction of the Suffian Salary Scheme on January 1, 1970 his salary of \$420 was converted to \$575 in the Clerical Officer

Grade II scale in the scale of \$400 x 25 — 700 and as there was no efficiency bar there he continued thereafter to draw annual increments until his retirement on March 10, 1973 when his salary was \$650 per month.

In his Statement of Claim, appellant contended that the various conversions of his salary scale confirmed his appointment above the Examination Bar and did not alter or vary his terms of employment. He alleged that the respondent had deprived him of his normal increments and of passing the vacancy bar on his salary scale since May 1, 1950, and of being converted to a clerical officer grade I under the Suffian Salary Scale.

Such stoppage of increments, he claimed was contrary to and in breach of his terms of appointment, and therefore prayed for, *inter alia*,

- (a) A declaration that the stoppage of increment of the Plaintiff's salary for his service with the defendant on May 1, 1950 and thereafter was and is unlawful, void and inoperative and of no effect;
- (b) And that an account be taken of the increments of the salary due to the plaintiff from the defendant as from May 19, 1963;
- (c) Judgment for the said amounts found to be due to the plaintiff;
- (d) Interest; and
- (e) Costs.

The defences which the learned trial judge considered were:

- (a) Competency to vary the terms of appointment unilaterally;
- (b) Estoppel;
- (c) Prerogative and jurisdiction.

A fourth, which he clearly did not consider, and which indeed was never mentioned during the course of this appeal was that of limitation.

In para 13 of the Statement of defence, the respondent had contended that the suit was not instituted within the period permitted by the Limitation Ordinance, 1953, and was therefore statute barred. This defence was abandoned during submission before the trial judge, I think because of the counter argument that this stoppage of increments, which was the cause of action recurred every year from the first stoppage in 1951.

The learned trial judge rejected the defences of estoppel and that of prerogative and want of jurisdiction but agreed with the defendant/respondent that the State was competent to vary the terms of service unilaterally and consequently dismissed the action.

The letter of offer of appointment (Page 62 of the Records) which appellant accepted made no mention of his having to pass any examination. Would it therefore follow that he should not be required to pass the examination?

On his behalf it was submitted that the appointment was contractual in nature and so remained. We were referred to the decision in *Government of Malaysia v.*

A *Rosalind Oh Lee Pek Inn*⁽⁵⁾ at page 224 where Suffian F.J. (as he then was) held that though the plaintiff in that case, a police inspector held office at the pleasure of the Yang Dipertuan Agung, the relationship between her and the Crown was nevertheless contractual. We were also referred to a passage in the Privy Council decision in *Kodeeswaran v. A.G. of Ceylon*⁽⁷⁾ at pages 464/465 where their Lordships said,

B "A right to terminate a contract of service at will coupled with a right to enter into a fresh contract of service may in effect enable the Crown to change the terms of employment in future if the true inference to be drawn from the communication of the intended change to the servant and his continuing to serve thereafter is that his existing contract has been terminated by the Crown and a fresh contract entered into on the revised terms. But this cannot affect any right to salary already earned under the terms of his existing contract before its termination."

C Our attention was also drawn to the High Court of Australia decision in *Carey v. The Commonwealth*⁽⁸⁾ where, though it was affirmed that subject to any statute to the contrary, the King has the right to terminate the appointment of his servant at pleasure and without cause, the servant is entitled to travelling allowance and salary until dismissal.

D Mr. Wilson also cited the decision in *Haji Ariffin v. Government of Pahang*⁽⁹⁾ — Headnote 1 and *Gnana-sundram v. Public Services Commission*⁽¹⁰⁾ — Headnote (2) as authority for the proposition that Government may, as in this case, have a contractual relationship regulating service and that both sides could therefore rely upon the terms of such contract.

E It was further submitted that though Kelantan did not then have service regulations similar to General Orders Cap. A Reg. 21 & 22, the respondents admit conforming to similar practices.

F The two regulations are reproduced below:

"Appointment of serving officers.

21. A Commission or other appointing authority reserves the right to appoint Government officers serving under other schemes of service, or serving in a Government appointment not covered by a scheme of service, to posts governed by any scheme of service provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the scheme of service or are above the normal age limit,

Appointment above minimum salary.

G 22. A Commission or other appointing authority reserves the right to appoint suitably qualified persons direct to any point in the timescale or to any class or grade. Officers so appointed may be required to serve on probation for a period equal to the normal probationary period under the scheme of service concerned."

H It followed, according to this line of argument that Government can employ a servant on any scale, class or grade, if suitably qualified, and once so employed, this became a term of the contract.

I It is worth noting however that the two Regulations refer to appointments to a scheme of service in one case, and point of entry on the salary scale on the other, and do not refer to any requirement as regards examinations and are therefore in my view irrelevant to the present case.

In his grounds of judgment the learned trial judge had cited a passage from the judgment of Suffian F.J. (as he then was) in *Government of Malaysia v. Rosalind Oh Lee Pek Inn*⁽⁵⁾ at page 224 which reads:

"Though the plaintiff holds office at the pleasure of the Yang Dipertuan Agung (Article 132(2A) of the Federal Constitution) I hold contrary to the arguments on behalf of the government that the relation between her and the Crown are contractual.

I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J. at page 1894 when delivering the judgment of the Indian Supreme Court in *Roshan Lal v. Union of India* A.I.R. 1967 S.C. 1889:

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government.... The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties."

Mr. Wilson concedes that whilst appellant serves at the pleasure of the Ruler and whilst his rights and obligations can be amended unilaterally by government by way of statutes or statutory rules, these cannot be altered by administrative instructions or regulations.

But it would seem that the very principle of service at the pleasure of the Ruler would mean that the rules prevailing at the time of the servant's appointment cannot be expected to be observed for all time to come.

Thus in *Mohamed Hussein v. State of Hyderabad*⁽⁶⁾ where a number of teachers sought to obtain a Declaration making void directions issued by the Director of Public Instructions, requiring them to pass a language test, claiming that no stipulations of this nature were entered into when the teachers were employed, the court held:

"We think no express stipulations of this nature are necessary. Whatever may have been the terms of their employments, the applicants are public servants and the terms of their service are always subject to the qualifications dictated by the public policy. No matter to what service the servant may belong and no matter what position he holds in the service, such qualifications are always implied in the engagement. It is enough that a citizen is a public servant and the qualification is directed by the public, no matter on what grounds it is based. Therefore, the applicants' employments as the teachers of primary schools contain by implication the stipulations that they are to conform to the rules framed on public policy for the efficient discharge of their duties. At any rate we do not think that they can claim that the rules prevailing at that time of their employment are to be observed for all time to come. That cannot be reconciled with the principles of being employed at the pleasure of the President or the Rajpramukh."

I think it ridiculous to suggest that appellant's terms of service is to be confined to those terms set out in the "Letter of Appointment" at page 62 (all pages referred to are those in the appeal records), just as it would be equally untenable to hold his salary was to remain at \$120 per month. The letter at page 63 shows that this is only the initial salary, and page 67 confirms that this is on the scale prescribed for Factory Clerks.. It would follow that there is implied in the contract the usual terms applicable to clerks of that category including the examination requirement.

Whatever doubts there might have been about the latter implied terms, the acceptance of the new rates of the "1950 Scheme of Service" pages 69/70,

involved the acceptance by appellant of the whole of the 1950 Scheme of Service (the Benham Scheme), including the requirement of passing the State Clerical Service Examination for clerks of the State Clerical Service, Higher Division. From the time of the acceptance by appellant of the new scheme of service on May 15, 1951 it cannot be argued any longer that the requirement of passing the examination was a new term unilaterally imposed.

The only question is whether the fact that he was being paid a salary above the examination bar meant that he could no longer be required to pass that examination if he is to be entitled to continue drawing further increments of salary.

I am of the view that, in the absence of an express stipulation to the contrary, the payment of an initial salary above the bar must be regarded as a mere indulgence by the State, in recognition of his past services, but that the requirement that he should pass an examination required under the rules of service for clerks in the State Clerical Service, Higher Division remains applicable to him, so that he had no right to further increments, until he has passed the prescribed examination.

Accordingly I would dismiss this appeal with costs.

Suffian L.P. concurred.

Raja Azlan Shah F.J. (read by Wan Suleiman F.J.): I can see nothing, either in principle or authority, to warrant us in coming to a conclusion different from that of the trial judge.

The argument that Government cannot unilaterally amend the conditions of service of a person in the public service of a State by administrative rules and regulations overlooks and negatives the tenure at pleasure laid down in Art. 132(2A) of the Constitution. In my view, the rules and regulations relating to the public services under the Constitution are directory, liable to be changed to suit the public policy of the State, and such variations are not amenable to directions under the schedule to section 25 of the Courts of Judicature Act, 1964.

I agree that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Wilson & Co.*